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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO October 11 20 16
BY R. Firdaus ANALYST

10 **BEFORE THE**
11 **PHYSICIAN ASSISTANT BOARD**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 950-2015-000580

14 **BRUCE HARRY GARBETT, P.A.**
2231 Pacific Avenue, B-2
15 Costa Mesa, CA 92627

A C C U S A T I O N

16 **Physician Assistant License No. 11636**

17
18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Maureen L. Forsyth (complainant) brings this Accusation solely in her official
23 capacity as the Executive Officer of the Physician Assistant Board, Department of Consumer
24 Affairs, State of California.

25 2. On or about April 1, 1985, the Physician Assistant Board (Board) issued Physician
26 Assistant License No. 11636 to Bruce Harry Garbett, P.A. (respondent). The Physician Assistant
27 License was in full force and effect at all times relevant to the charges brought herein and will
28 expire on July 31, 2018, unless renewed.

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3. This Accusation is brought before the Physician Assistant Board (Board), under the authority of the following laws. All section references are to the Business and Professions Code (BPC) unless otherwise indicated.

4. Section 3501 of the Code states, in pertinent part:

“(a) As used in this chapter:

(1) ‘Board’ means the Physician Assistant Board.”

“ ”

“(4) ‘Physician Assistant’ means a person who meets the requirements of this chapter and is licensed by the board.”

“ ”
...

5. Section 3527 of the Code states, in pertinent part:

“(a) The board may order [...] the suspension or revocation of, or the imposition of probationary conditions upon a physician assistant license after a hearing as required in Section 3528 for unprofessional conduct which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the board or the Medical Board of California.

“ . . .

“(f) The board may order the licensee to pay the costs of monitoring the probationary conditions imposed on the license.

“(g) The expiration, cancellation, forfeiture, or suspension of a physician assistant license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.”

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1 6. Section 3531 of the Code states:

2 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
3 made to a charge of a felony or of any offense which is substantially related to the
4 qualifications, functions, or duties of the business or profession to which the license
5 was issued is deemed to be a conviction within the meaning of this chapter. The
6 board may order the license suspended or revoked, or shall decline to issue a license
7 when the time for appeal has elapsed, or the judgment of conviction has been affirmed
8 on appeal or when an order granting probation is made suspending the imposition of
9 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of
10 the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea
11 of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
12 information or indictment.”

13 7. Section 2227 of the Code states:

14 “(a) A licensee whose matter has been heard by an administrative law judge of
15 the Medical Quality Hearing Panel as designated in Section 11371 of the Government
16 Code, or whose default has been entered, and who is found guilty, or who has entered
17 into a stipulation for disciplinary action with the board, may, in accordance with the
18 provisions of this chapter:

19 “(1) Have his or her license revoked upon order of the board.

20 “(2) Have his or her right to practice suspended for a period not to exceed one
21 year upon order of the board.

22 “(3) Be placed on probation and be required to pay the costs of probation
23 monitoring upon order of the board.

24 “(4) Be publicly reprimanded by the board. The public reprimand may include
25 a requirement that the licensee complete relevant educational courses approved by the
26 board.

27 “(5) Have any other action taken in relation to discipline as part of an order of
28 probation, as the board or an administrative law judge may deem proper.

1 “(b) Any matter heard pursuant to subdivision (a), except for warning letters,
2 medical review or advisory conferences, professional competency examinations,
3 continuing education activities, and cost reimbursement associated therewith that are
4 agreed to with the board and successfully completed by the licensee, or other matters
5 made confidential or privileged by existing law, is deemed public, and shall be made
6 available to the public by the board pursuant to Section 803.1.”

7 8. Section 2234 of the Code states, in pertinent part:

8 “The [B]oard shall take action against any licensee who is charged with
9 unprofessional conduct. In addition to other provisions of this article, unprofessional
10 conduct includes, but is not limited to, the following:

11 “(a) Violating or attempting to violate, directly or indirectly [...] any provision
12 of this chapter.

13 “...”

14 9. Unprofessional conduct under Code section 2234 is conduct which breaches the rules
15 or ethical code of the medical profession, or conduct which is unbecoming a member in good
16 standing of the medical profession, and which demonstrates an unfitness to practice medicine.
17 (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

18 10. Section 2236 of the Code states, in pertinent part:

19 “(a) The conviction of any offense substantially related to the qualifications,
20 functions, or duties of a physician and surgeon constitutes unprofessional conduct
21 within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record
22 of conviction shall be conclusive evidence only of the fact that the conviction
23 occurred.

24 “...”

25 “(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is
26 deemed to be a conviction within the meaning of this section and Section 2236.1.
27 The record of conviction shall be conclusive evidence of the fact that the conviction
28 occurred.”

11. Section 2239 of the Code states:

“(a) The use [...] of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.

“(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The Division of Medical Quality¹ may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.”²

12. California Code of Regulations, title 16, section 1399.521 states, in pertinent part:

“In addition to the grounds set forth in section 3527, subdivision (a), of the Code, the board may deny, issue subject to terms and conditions, suspend, revoke or

¹ California Business and Professions Code section 2002, as amended and effective January 1, 2008, provides that, unless otherwise expressly provided, the term “board” as used in the State Medical Practice Act (Cal. Bus. & Prof. Code section 2000 et seq.) means the “Medical Board of California” and references to the “Division of Medical Quality” and the “Division of Licensing” in the Act or any other provision of law shall be deemed to refer to the Board.

² There is a nexus between a physician’s use of alcoholic beverages and his or her fitness to practice medicine, established by the Legislature in section 2239, “in all cases where a licensed physician used alcoholic beverages to the extent or in such a manner as to pose a danger to himself or others.” (*Watson v. Superior Court* (Medical Board) (2009) 176 Cal.App.4th 1407, 1411.)

1 place on probation a physician assistant for the following causes: (a) Any violation of
2 the State Medical Practice Act which would constitute unprofessional conduct for a
3 physician and surgeon. [...]"

4 13. California Code of Regulations, title 16, section 1399.525 states, in pertinent
5 part:

6 "For the purposes of the denial, suspension or revocation of a license or
7 approval pursuant to division 1.5 (commencing with section 475) of the code, a crime
8 or act shall be considered to be substantially related to the qualifications, functions or
9 duties of a person holding a license under the Physician Assistant Practice Act if to a
10 substantial degree it evidences present or potential unfitness of a person holding such
11 a license to perform the functions authorized by the license or approval in a manner
12 consistent with the public health, safety or welfare. Such crimes or acts shall include,
13 but are not limited to, the following:

14 "(a) Violating or attempting to violate [...] any provision or term of the
15 Medical Practice Act.

16 "(b) Violating or attempting to violate [...] any provision or term of the
17 Physician Assistant Practice Act.

18 "...

19 "(i) Conviction for driving under the influence of drugs or alcohol."

20 **COST RECOVERY**

21 14. Section 125.3 of the Code states, in pertinent part:

22 "(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary
23 proceeding before any board within the department or before the Osteopathic Medical Board,
24 upon request of the entity bringing the proceedings, the administrative law judge may direct a
25 licensee found to have committed a violation or violations of the licensing act to pay a sum not
26 to exceed the reasonable costs of the investigation and enforcement of the case.

27 "...

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1 “(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs
2 are not available, signed by the entity bringing the proceeding or its designated representative
3 shall be prima facie evidence of reasonable costs of investigation and prosecution of the case.
4 The costs shall include the amount of investigative and enforcement costs up to the date of the
5 hearing, including, but not limited to, charges imposed by the Attorney General.

6 “...

7 “(e) If an order for recovery of costs is made and timely payment is not made as directed in
8 the board’s decision, the board may enforce the order for repayment in any appropriate court.
9 This right of enforcement shall be in addition to any other rights the board may have as to any
10 licentiate to pay costs.

11 “(f) In any action for recovery of costs, proof of the board’s decision shall be conclusive
12 proof of the validity of the order of payment and the terms for payment.

13 “(g)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the
14 license of any licentiate who has failed to pay all of the costs ordered under this section.”

15 “...

16 “(i) Nothing in this section shall preclude a board from including the recovery of the costs
17 of investigation and enforcement of a case in any stipulated settlement.

18 “...”

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Conviction of a Crime Substantially Related to the Qualifications,**
21 **Duties, and Functions of a Physician Assistant)**

22 15. Respondent has subjected his Physician Assistant License No. 11636 under sections
23 2227, 2234, and 3527, as defined by section 2236, subdivision (a), of the Code, and under title 16,
24 section 1399.525, as defined by section 1399.525, subdivision (i), of the California Code of
25 Regulations in that he has been convicted of a crime substantially related to the qualifications,
26 functions, or duties of a physician assistant, as more particularly alleged hereinafter:

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1 **October 15, 2015 DUI Conviction**

2 16. On or about June 15, 2015, Sergeant H. ("Sgt. H.") of California Highway Patrol
3 (CHP) was in the parking lot of the gas station at the 2100-block on Harbor Boulevard in Costa
4 Mesa, California, when he was flagged down by P.G., one of the parties in a traffic collision.
5 P.G. told Sgt. H. that the car behind him being driven at the time by respondent had just rear
6 ended him. Sgt. H. verbally instructed P.G. and respondent to turn right onto northbound Harbor
7 Boulevard and then turn into the driveway of the Chevron gas station so he could assist them.

8 17. Sgt. H. smelled strong odor of an alcoholic beverage on respondent's breath while
9 conversing with him. At approximately 1:38 P.M., Officer Z.B. of CHP responded to the gas
10 station. Officer Z.B. saw Sgt. H. who requested that Officer Z.B. conduct a DUI investigation on
11 respondent.

12 18. Officer Z.B. contacted respondent who was sitting on the curb in the parking lot.
13 While conversing with respondent, Officer Z.B. saw that respondent's eyes were red and watery.
14 Officer Z.B. also smelled the odor of an alcoholic beverage on respondent's breath. Officer Z.B.
15 asked respondent to stand and walk over to a shaded area in the parking lot, so he could conduct a
16 Horizontal Gaze Nystagmus test ("HGN"). Respondent complied. When respondent stood up,
17 Officer Z.B. noticed that he was unsteady. Respondent lost his balance and almost fell down.
18 Officer Z.B. also saw that respondent walked in an unsteady and staggering manner.

19 19. When Officer Z.B. asked respondent if he had been drinking, respondent stated he
20 had some vodka and cranberries earlier in the morning. When Officer Z.B. asked him how many
21 drink he had, respondent stated he was not sure.

22 20. Prior to having him attempt to perform, Officer Z.B. explained to respondent the
23 HGN test. Officer Z.B. was unable to conduct the HGN test because respondent could not follow
24 the verbal instructions, kept moving his head from side to side, and did not properly follow the
25 stimulus.

26 21. Based upon his Driving Under the Influence ("DUI") investigation, Officer Z.B.
27 placed respondent under arrest for driving under the influence of alcohol in violation of Vehicle
28 Code section 23152, subdivision (a). Officer Z.B. informed respondent that he was required to

1 submit to a chemical test, either in the form of a breath test or a blood test. Respondent chose to
2 take the breath test.

3 22. Respondent provided two breath samples which returned results of 0.26% and 0.26%
4 Blood Alcohol Content ("BAC").

5 23. On or about July 20, 2015, the Orange County District Attorney's Office, in the case
6 entitled *The People of the State of California v. Bruce Harry Garbett*, Superior Court Case No.
7 15WM08908, charged respondent in Count 1, with a misdemeanor violation of Vehicle Code
8 section 23152, subdivision (a) [Driving Under the Influence of Alcohol], and in Count 2, with a
9 misdemeanor violation of Vehicle Code section 23152, subdivision (b) [Driving with BAC 0.08%
10 or More].

11 24. On or about October 15, 2015, in the Superior Court of California, County of Orange,
12 in the case entitled *The People of the State of California v. Bruce Harry Garbett*, Superior Court
13 Case No. 15WM08908, respondent pled Guilty and was convicted of Count 2, violating Vehicle
14 Code Section 23152, subdivision (b) [Driving with BAC 0.08% or More]. At the time of his
15 Guilty plea, respondent admitted his BAC at the time of driving was 0.26%. Respondent also
16 admitted the factual basis for his Guilty plea. Respondent was sentenced to three (3) years
17 informal probation, twenty (20) hours of community service in lieu of 30 days in county jail,
18 enrollment in and completion of the 9 Months First Offender Program, mandatory attendance of
19 the Mothers Against Drunk Driving (MADD) program, and fines and fees in the total amount of
20 \$860.00.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Excessive Use of Alcohol)**

23 25. Respondent has subjected his Physician Assistant License No. 11636 under sections
24 2227, 2234, and 3527, as defined by section 2239, subdivision (a), of the Code, in that he used
25 alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to
26 respondent, another person or the public, as more particularly alleged in paragraphs 15 through
27 24, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 26. Respondent has subjected his Physician Assistant License No. 11636 under sections
4 2227, 2234, and 3527, as defined by section 2236, subdivision (a), and 2239 of the Code, and title
5 16 sections 1399.521 and 1399.525 of the California Code of Regulations, in that he has engaged
6 in conduct which breaches the rules or ethical code of the medical profession, or conduct which is
7 unbecoming a member in good standing of the medical profession, and which demonstrates an
8 unfitness to practice medicine, as more particularly alleged in paragraphs 15 through 25, above,
9 which are hereby incorporated by reference and realleged as if fully set forth herein.

10 **DISCIPLINE CONSIDERATIONS**

11 27. To determine the degree of discipline, if any, to be imposed on respondent,
12 complainant alleges that on or about October 15, 2003, in a prior criminal proceeding entitled *The*
13 *People of the State of California vs. BRUCE GARBETT* in San Bernardino Superior Court, Case
14 No. TBV29612, respondent was convicted for a misdemeanor violation of Vehicle Code section
15 23152, subdivision (b) [Driving Under the Influence of Alcohol / 0.08% BAC or More] and was
16 ordered to 36 months summary probation, one (1) day county jail, and fines and fees in the total
17 amount of one thousand four hundred and seventy four dollars (\$1,474). Additionally, respondent
18 was ordered to enroll in and complete the First Offender Alcohol Program and to obey all laws.
19 The record of the criminal proceeding is incorporated as if fully set forth. On the date of the
20 offense, on or about July 31, 2003, respondent provided a breath sample upon DUI arrest. His
21 breath sample returned a BAC of 0.119%.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physician Assistant Board issue a decision:

1. Revoking or suspending Physician Assistant License No. 11636, issued to respondent Bruce Harry Garbett, P.A.;
2. Ordering respondent Bruce Harry Garbett, P.A. to pay the Physician Assistant Board the costs of the investigation and enforcement of this case pursuant to Business and Professions Code section 125.3, and if placed on probation, the costs of probation monitoring; and
3. Taking such other and further action as deemed necessary and proper.

DATED: October 11, 2016


MAUREEN L. FORSYTH
Executive Officer
Physician Assistant Board
State of California
Complainant

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